IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1540 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and
MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : Yes

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution : NO

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5. Whether it is to be circulated to the Civil Judge? : NO
2 to 5 NO

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MADHUBEN JAYANTILAL PATEL

Versus

GIHUBHAI BABAJI THAKORE

Appearance:

MR SURESH M SHAH for Petitioners
MR A M Kapadia for Mr SB VAKIL for Respondent No. 1, 3
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE D.P.BUCH

Date of decision: 25/11/1999

C.A.V. JUDGMENT (Per D P Buch, J.)

1. This is an appeal by the original claimants against the judgment and award dated 28.2.1983 recorded by the learned Motor Accident Claims Tribunal (Main), Narol in Motor Accident Claim Petition No.607/80 whereby the learned Tribunal was pleased to award compensation to the claimants in a sum of Rs.1,50,000/-. However, the learned Tribunal was pleased to clarify that the limits of liability of the Insurance Company shall be Rs. 10,000/-. The learned Tribunal was also pleased to award interest at the rate of 6% per annum from the date of petition till the date of payment together with costs of the litigation.

2. The facts may be briefly stated as follows:

The deceased Jayantilal B Patel was proceeding in a jeep car bearing No.GRS 4428 along with other persons. The vehicle was going on Sanand-Sarkhej Highway and when it reached near brick-kiln of Somabhai Prajapati Bhattha at about 7.30 p.m. on 6.5.1980, the first respondent being driver of the said vehicle lost control over the steering, with the result, the jeep car went off the road and dashed against a road-side tree. With the result, the deceased sustained grievous injuries and other persons also sustained injuries. The deceased was taken to V.S. Hospital at Ahmedabad and he ultimately succumbed to the injuries at about 10 p.m. Post Mortem was carried out on 7.5.1980.

3. Therefore, the appellant-claimants have claimed before the learned Tribunal that the deceased died on account of rash and negligent driving on the part of the first respondent and therefore, the appellants were entitled to claim compensation from the first respondent on account of his tortuous act.

4. The appellants also contended before the Tribunal that the second respondent was the owner of the vehicle involved in question and the first respondent was driving the said vehicle under the employment of the second respondent and, therefore, the second respondent is vicariously responsible to compensate the appellant-claimants.

5. The appellants further contended that the vehicle in in question was insured with the third respondent and the contract of insurance was in existence on the date of the accident and, therefore, the third respondent is in statutory and contractual obligation to indemnify the

owner.

6. That thereby all the three respondents are jointly and severally responsible and liable to compensate the petitioner.

7. In fact, the appellants claimed compensation before the learned Tribunal for a sum of Rupees Two lakhs. However, after appreciating the evidence, both the oral and documentary, which was made available to the Tribunal, the Tribunal was pleased to hold that the appellants were entitled to compensation of Rupees One lakh Fifty thousand with running interest at the rate of 6% per annum from the date of the petition till the date of payment together with proportionate costs of the litigation.

8. Respondents No.1 and 2 have been held jointly and severally responsible and liable to pay compensation with costs and interest as aforesaid to the appellants.

9. However, the learned Tribunal clarified that the third respondent shall be responsible and liable to indemnify the owner only to the extent of Rs.10,000/- with proportionate costs and interest as aforesaid.

10. Feeling aggrieved by the aforesaid judgment and award of the Tribunal, the appellants have preferred this appeal before this Court on the ground that the learned Tribunal has committed serious error in limiting the liability of the third respondents to the extent of Rs.10,000/- only. That in fact, the learned Tribunal ought to have held that since the owner has paid additional premium for the coverage of the persons travelling in the vehicle, the Insurance Company was responsible to indemnify owner to the extent of the entire amount awarded in the litigation. That therefore, the learned Tribunal has committed serious error as aforesaid and, therefore, it has been prayed that the limits of the liability of the Insurance Company should be held to be Rs. 1,50,000/- in the present case.

11. The learned Advocates for the appellants as well as for the third respondent have advanced their arguments at length. So far as the learned Advocate for the appellants is concerned, it has been very vehemently and extensively argued that the learned Tribunal ought to have held that the Insurance Company is fully responsible to indemnify the owner for the entire amount awarded in the matter.

12. It has been argued on behalf of the appellant-claimants that the learned Tribunal ought to have considered that the deceased was travelling as gratuitous passenger in the said vehicle and, therefore, there was no question of fixing any limited liability under the law or under the contract of policy.

13. On the other hand, learned Advocate for the third respondent has very vehemently contended that the deceased was not a gratuitous passenger but he was a paid passenger and therefore, the said argument advanced on behalf of the appellants cannot be accepted for a moment.

14. If we turn to the petition filed before the Tribunal, we find that the petitioners have themselves made it clear in para 10 of the petition that the deceased Jayantilal Patel had gone to attend the marriage of his cousin on 6.5.1980 at about 5 p.m. in the early morning, that the second respondent was using his car for carrying passengers on hire or reward, that the said respondent was also having a Registration Certificate for using his jeep car for carrying passengers on hire or reward. That the said vehicle was taken on hire by the brother of the bridegroom, Ramanbhai, who happened to be cousin of the deceased. That the rent was for fixed at Rs.1.40 per k.m. and, therefore, an amount of Rs..500/was paid in advance to the second respondent through Ramanbhai.

15. So it is absolutely clear from these pleadings that the vehicle involved in the accident was used by the second respondent for the purpose of hire or reward and the vehicle was in fact, hired for carrying the marriage party at the relevant point of time. So on these pleadings of the petitioner-appellants. it would not be possible for them now to say that the deceased was travelling in the said vehicle as gratuitous passenger .

16. If we go to the evidence, we will find that the petitioners have examined Madhuben Jayantilal, the widow of the deceased. However, it seems that she does not say anything about the contract. Her evidence mainly goes for the income of the deceased only. Then there is an important version of witness No.3 Ramanbhai Galabhai, who has very clearly deposed in his evidence that for the purpose of carrying the marriage party, they had hired a S.T. bus and a jeep car, so he is very clear in his evidence that even the jeep car was hired for carrying the marriage party. He is the brother of the bridegroom and cousin of the deceased and, therefore, he was very well knowing about the contract between the marriage

party and the second respondent-owner of the vehicle.

17. The witness further goes to say that the jeep car hired was bearing No.GRS 4428 of the second respondent, that the fair was for fixed at 1.40 per k.m. that he had made payment of Rs.500/- to the second respondent towards advance fare. The evidence of this witness was recorded on 5.11.1981 and till then the second respondent had not filed written statement before the tribunal. None appeared on behalf of the second respondent to cross-examine the above witness. Therefore, till this date, the petitioner had a say that the vehicle was hired at Rs. 1.40 per k.m. and that case was pleaded in the petition and was advanced in oral evidence also.

18. It seems that at this point of time, the petitioner-appellants realised that they might not get compensation of adequate amount from the Insurance Company if the deceased would be treated as a paid passenger. Therefore, the petitioner-appellants appeared to have made some diversions from the original case pleaded by them in the original claim petition.

19. It appears from the proceedings of the matter that after the evidence of the said witness was recorded on 5.11.1981, the second respondent appeared before the Tribunal to file written statements at Exh.91. For the first time on 8.6.1982, a defence was placed on record through the said written statement of the second respondent that the deceased Jayantilal and the second respondent were close friends and therefore, the jeep car was provided for the said marriage party free of charge, meaning thereby that the deceased was travelling in the said vehicle as gratuitous passenger.

20. Again, in order to clarify the said position, the said witness Ramanbhai Galabhai was cross-examined on behalf of the second respondent and, there he has said that it is true that the amount of Rs.500/paid by him was paid to Jayantibhai and not to respondent No.2. This clearly appears to be an after thought, in order to go out of the said line of pleadings of the petitioner-appellants. Then he has said further in the cross-examination that the respondent No.2 never told him that the charges for distance of one kilo metre for a bus with a capacity of 52 passengers would come to Rs.1.40 per k.m.

21. Now the witness has already committed to the charges of Rs.1.40 per k.m. in his examinaion-in-chief. In his cross-examination, he said that the second

respondent never told him that the bus charge would be Rs.1.40 per k.m. This would mean that he really did mean that the charges were for jeep car and not for the bus. Even otherwise, this witness does not say that the vehicle was given free of charge even in the cross-examination of respondent No.2. On the other hand, the witness has made it clear in the cross-examination of respondent No.2 that the deceased Jayantilal had told him that he should not bother about the jeep car's charges as the second respondent was his friend and that at the best he might pay diesel charges to the second respondent.

22. This means that if no regular charges, at least diesel charges were payable according to the suggestion made to this witness on behalf of the second respondent during the cross-examination of the witnesses. This makes it clear that even indirectly the second respondent suggested that this was not a case of free passage.

23. If we go to the evidence of Mohammad Abdul Karim, who happens to be second respondent and the owner of the vehicle involved in the accident, then this witness has deposed that Jayantilal, the deceased had met him and requested him to lend his jeep car for marriage of his brother. Therefore, he agreed to the proposal. That, the deceased also wanted to hire a special S.T. bus, and when he (the witness) was about to leave for Ahmedabad, when the deceased told him that one Controller who happens to be a native of Village Sadara was working in S.T. bus at Ahmedabad and the witness was also wanted to go to Ahmedabad and, therefore, Jayantilal gave him a lumpsum amount of Rs.500/- to be paid for booking a special S.T. bus and he had to pay Rs.1500/- and odd for booking a special S.T. bus for the deceased and the passenger fare was Rs.1.40 per k.m. for the bus.

24. Now, on this point, there is no other evidence on record produced by the parties. The receipt for payment of Rs.1500/- to the S.T. Corporation by this witness is not on record. It is also not on record as to how the remaining amount was paid. Moreover, his evidence does not have get corroboration from any other evidence on record. It is totally contrary to the pleadings of the claimant-appellants. He has denied that the deceased had not given him the money. He has also denied that the amount of Rs.500/- was collected by him as jeep car charges. In para 14 of his evidence, the witness made it clear that he was using his jeep car for plying for hire and reward also. The record also shows that at Exh.103, the claim form submitted by the second respondent for getting compensation for the damage sustained by his jeep

car involved in the accident. There it has been mentioned that the jeep car was being used at the time of the accident for the purpose of carrying passengers. Then in the last column of item No.5, it has been mentioned that the vehicle was plying for hire upto 31.3.1981.

25. An attempt was made to show that the form was filled up by some one else and the second respondent merely signed the same. However, when he has signed the form, the form was not shown to be blank. Moreover, he did not contest or object against any averments made in the said claim form and therefore, it can now not be said that the second respondent merely signed the said claim form at Exh.103 without reading the contents thereof. It is not the case of this respondent that the claim form was blank when he signed.

26. So looking to the above facts and circumstances and considering the evidence on record, it is very clear that the deceased was travelling in the said jeep car at the time of the accident as paid passenger and not as gratuitous passenger. The appellants, themselves have made their claim in the claim petition accordingly and the averments made in the said petition contain admission on the part of the appellants and any evidence in variance of the said pleadings cannot be looked into. In fact, no evidence in variance to the pleadings is permissible under the rule of Evidence Act. Even if any such evidence is permitted to be produced, then the Tribunal was required to ignore such evidence and if such evidence is ignored, then it is apparently clear that the deceased travelled in the said vehicle at the time of the accident as paid passenger and not as gratuitous passenger. Therefore, we do not agree with the said arguments advanced on behalf of the appellants.

27. We, therefore, are of the view that the tribunal has rightly held that the deceased was travelling in the said vehicle as a paid passenger and not as a gratuitous passenger. Then, the question will relate to the nature of the vehicle involved in the accident. The learned Advocate for the appellants has argued at length before us that the vehicle involved in the accident was a private vehicle and not a commercial vehicle. However, if we look to the pleadings, we find that there is an absence of pleading on the subject. The appellants have not made any specific averments on the point. The owner of the vehicle who has filed written statement at a very late stage and has not stated in the written statement

that it was a private vehicle.

28. In para 20 of the judgment, the learned Tribunal has very clearly observed that there was no dispute raised as to the fact that the jeep car was a vehicle plying in a contract-carriage permit. In other words, it was a vehicle which was used for carrying passengers for hire or reward. It means that the issue was conceded before the tribunal by the parties to the litigation, and therefore, it would not be open to the appellants now to take a different turn on the point.

29. Then we may also refer to document at Exh.109 which is a permit issued under Rule 81. It shows that it is a permit in respect of a particular contract carriage. This document shows that maximum number of passengers permitted to be carried is shown as 5+1 = 6 as per R.C. The document further shows in column 11 that the permit does not entitle to use the vehicle herein described as public carrier or a goods vehicle for hire. In short, the permit proves that the vehicle involved in the accident was a Taxi, permitted to carry passengers on hire or reward.

30. This means that the vehicle involved in the accident was permitted to be used as contract carriage. This would also show that it was not a private vehicle but it was permitted to be used for carrying passengers on hire or reward on contract carriage basis. Considering the material and the evidence on record and considering the stand taken by the parties before the Tribunal, we are of the view that the tribunal has rightly held that the vehicle was being used and was permitted to be used for carrying passengers on hire or reward under specific permit referred to above in the form of Exh.109. It would, therefore, not be open now to the appellants to argue that it was a private vehicle.

31. We are, therefore, of the decision that the vehicle involved in the accident was permitted to carry passengers on hire or reward and that the deceased was actually travelling in the said vehicle at the time of of accident as paid passenger. In view of the said decision, we do not consider now it necessary to decide as to what would happen if it was a private vehicle and the deceased was gratuitous passenger. Then it was vehemently contended by the learned Advocate for the appellants that the provisions contained in Section 95 clearly show that liability of the Insurer is unlimited. On the other hand, the learned Advocate for the Insurance Company has also argued that under the said provisions of

law, the liability of the Insurance Company is limited to RS.10,000/- per passenger. It would, therefore, be necessary for us to consider the provisions of Section 95 of the Motor Vehicles Act, 1939 as was applicable on the date of the accident as well as on the date of the petition filed by the claimants for getting the compensation. Section 95 of the said Act clearly shows that except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment -

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all.

This means that upper limit has been fixed at Rs.50,000/- i.e. a total limit fixed by the law. However, this is in respect of the persons other than passengers carried for hire or reward. In the present case, the deceased was travelling as paid passenger and, therefore, this clause will not apply to the case of the present appellants. The provisions contained in Section 95 with respect to paid passengers would read as follows:

"95 (2) Subject to the proviso to sub-section (1) a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely;

(a) Where the vehicle is a goods vehicle, a limit of Rupees fifty thousand in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 in respect of the death of, or bodily injury to, employees (other than the driver), nor exceeding six in number, being carried in the vehicle.

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment -

(i) In respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all,

(ii) in respect of passengers, -

(1) a limit of fifty thousand

rupees in all where the vehicle is registered to carry not more than thirty passengers;

xxx xxx

(4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case;

Considering the above provisions it is very clear that the limits of liability has been fixed at Rs.10,000/per passenger and Rs.50,000/- in all. Then we can turn to the policy produced on record. The original policy on record shows that the premium has been paid as follows:

Basic premium	: Rs.501.00	
Strike & Riot	: Rs.140.00	
LL to 5 passengers	: Rs. 42.50	
WC to 1/p driver	: Rs. 8.00	
	Rs. 691.50	
- 10% Spl.Disc.	:	Rs. 69.15
net	Rs. 622.35	
Rounded premium		Rs. 622.00

The limits of liability shown in the policy can be read as follows:

"Limits of the amount of the Company's liability under Section II-1(i) in respect of any accident

Limit of the amount of the Company's liability under Section II-1 (ii) in respect of any claim or series of claims arising out of one event."

Annexure to the policy reads as follows:

"1. Subject to the Limits of Liability the Company will indemnify the Insured against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor

Vehicle.

(ii) damage to property caused by the use (including the loading and/or unloading) of the Motor Vehicle."

IMT 13 annexed to the policy which reads as follows:

"In consideration of an additional premium of Rs.42/50 and notwithstanding anything to the contrary contained in General Exception No.4 but subject otherwise to the terms, exceptions, conditions and limitations of this Policy the Company will indemnify the Insured against liability at law for Compensation (including Law Costs of any claimant) for death of or bodily injury to any person other than a person excluded under General Exception No.3 being carried in on upon or entering or mounting or alighting from the vehicle described in the Schedule hereto but such indemnity is limited to the sum of Rs.10,000/- in respect of any one person and subject to the aforesaid limit in respect of any one person to Rs.50,000/- in respect of any number of claims in connection with any one such vehicle arising out of one cause."

Therefore, it is very clear that the risk of the passengers has been covered in accordance with law contained in Section 95 of the said Act of 1939.

32. It is vehemently contended that since the policy has been shown to be a comprehensive policy the risk covered is unlimited. For this purpose the learned Advocate for the appellants has invited our attention to the evidence of the officer of the Insurance Company showing that the policy is a comprehensive one. There is no dispute on the issue that the Insurance Officer has described this policy as a comprehensive policy. This can be gathered from the evidence of Mr Arvindbhai Dave at Exh.107. In para 2 of the cross-examination he has said that the policy is a comprehensive policy.

33. However, when the policy is described as comprehensive policy, it does not necessarily mean that it covers all sorts of risks under the sky. If a single risk in addition to the risk to be covered as a minimum requirement of law would also be treated to be a comprehensive policy. In the present case, we find that the policy covers the risk of strike and riot. This means that this risk was not required to be covered

compulsorily under the law and yet this risk has been covered and therefore the policy can be treated to be a comprehensive policy. This would not mean that it would cover even the risk of theft or other risks which may not have been specifically included in the schedule of premium. Therefore, we are not in agreement with the arguments of the appellants that since it is a comprehensive policy, the risk of the deceased stood covered on payment of premium to an unlimited extent.

34. It is next contended that additional premium of Rs.42/50 has been paid and therefore, the risk is unlimited. Here the clause shows that legal liability of 5 passengers premium is Rs.42/50. This would mean that the coverage is restricted to the legal liability and it is not a contractual liability. Therefore, even this clause does not show that additional premium has been paid for the coverage of unlimited risk.

35. Then the limits of liability show at the bottom of the policy and referred to above policy shows that the limit of the amount of the company's liability under section II-1(i) in respect of any accident shown as such amount as is necessary under the Motor Vehicle Act, 1939. This positively shows that it is an Act policy and not an unlimited policy.

36. If we refer to IMT 13 referred to above, it shows that death or bodily injury to any person other than a person excluded under General Exception No.3 being carried in on upon or entering or mounting or alighting from the vehicle described in the Schedule hereto to such indemnity is limited to the sum of Rs.10,000/- in respect of one person and subject to the aforesaid limit in respect of any one person upto Rs.10,000/- in respect of any number of claimant in connection with any such vehicles arising out of one cause.

37. Here we find that there is no doubt that there is an over-writing and the present figure reads as Rupees Fifty thousand. However, the true copy produced at Exh.48 shows as Rupees One Lakh. However, the liability per person has been shown to be Rupees Ten thousand in each of the two documents produced on record.

38. On the basis of the said two documents, it has been argued on behalf of the appellants that the over-writing must be ignored or it should be read in favour of the claimants as the over-writing has not been properly authenticated by any responsible person.

Therefore, according to the learned Advocate for the appellants the benefit should go to the appellants and not to the Insurance Company.

39. Here we also consider one more aspect. The documents are to be read as a whole and there should be harmonious interpretation so as to lead to a proper and correct direction. It would be seen that the capacity for carrying persons is 5+1 (including the driver). Therefore, excluding the driver the vehicle can carry 5 persons. Now if individual liability is fixed at Rs.10,000/- as maximum amount, then for 5 persons the total liability would come to Rs.50,000/-. Therefore, this figure of Rs.50,000/- is in consonance with the permit at Exh.109. Moreover, the original as well as the true copy of the policy also shows that the legal liability to 5 passengers has been considered for the purpose of taxing the premium so there also the limit is for 5 persons and again if we consider Rs.10,000/- per person, then the total would come to Rs.50,000/-.

40. Same is the case with the provisions contained in section 95 referred to above which also say that individual responsibility will be limited to Rs.10,000/per person and subject to a maximum of Rs.50,000/-. Therefore, considering the law and considering the averments made in the policy and IMT, we are of the view that the correction made in the policy so as to read it as Rs.50,000/- is in order and has been correctly made so as to bring this document in consonance and in conformity with the policy at Exh.48 as well as the original policy. We are also of the opinion that the policy is the main document of the contract between the parties and the annexures have to be in consonance and in conformity with the policy. Therefore, if we read the policy along with the said Annexures, it would be extremely clear that the ultimate intention of the parties was to restrict liability of the Insurance Company regarding coverage of risk is only to the extent of Rs.10,000/- per person and since the legal liability has been covered for 5 passengers, the total liability of the Insurance Company is Rs.50,000/-

41. The said liability has been fixed under clause of section (2)(1)(b) with respect to motor cab and the term motor cab has been defined in section 2 (15) as under:

> "2(15) "Motor cab" means any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward;"

42. It is vehemently contended that since the owner of the vehicle has paid additional premium for the coverage of the passengers, the risk covered by the Insurance Company through the said contract of policy is unlimited, now it has not been shown that any premium more than the required has been paid by the owner to the Insurance Company. Then it has been positively submitted that the premium paid at the rate of Rs.42.50 for 5 passengers is the minimum premium for the minimum coverage of risk under the law and, therefore, there is no extra premium paid for coverage of enhanced liability. Now if we read the policy as a whole in light of the background of section 95 of the Act of 1939, it would be very clear that the coverage of risk has been restricted to 5 persons and the liability has been limited to Rs.10,000/- per passenger. In view of the aforesaid clear reading of the policy and the law, we are of the view that it is not possible for us to agree with the arguments advanced on behalf of the appellants by the learned Advocate that the extra premium has been paid and the risk covered is for unlimited liability of the Insurance Company.

43. The learned Advocate for the appellants has relied upon a decision rendered in the case of Amrit Lal Sood v. Kaushalya Devi, reported in AIR 1998 SC 1433 and has argued that the policy of Insurance covers the risk of the deceased being any person as interpreted in the said decision. In this case, the deceased was a paid passenger and, therefore, his risk has been specifically mentioned in Section 95 of the Act, in the policy as well as in IMT 13. Therefore, the coverage of risk in respect of the deceased will have to be read in accordance with law and the contract between the parties. However, we do not propose to say that the risk of the deceased was not covered at all so far as this case is concerned.

44. The learned Advocate for the appellants has also relied upon a decision rendered in the case of G.M.D.C. v. Varjubhai, reported in 1979 GLR 123. Here it has been laid down that when the Insurer takes wider coverage than the minimum liability, then it would be that liability which he has undertaken to satisfy under the contract of policy under section 95(5) and under section 96(1). There cannot be any dispute about the same but when the liability has been restricted by law as well as by contract, then the principle of unlimited liability would not come into play.

45. On the other hand, the learned Advocate for the

Insurance Company has vehemently contended that there is no question of unlimited liability in the present case as there is a fixed contract contained in the policy in accordance with the law and it is an Act policy and therefore, the appellants cannot claim that the Insurance Company should shoulder unlimited liability. On this point the decision in the case of New India Assurance Co.Ltd. v. Shanti Bai, reported in AIR 1995 SC 1113 has been relied upon. There it has been observed that when no special contract between the Company and the owner of the vehicle to cover unlimited liability has been made and premium has been paid at the rate of Rs.12/- per passenger as stated in the tariff of the Company to cover liability of accident to passenger, then in that event, the policy cover only statutory liability of Rs. 15,000/-. It is also observed that the mere fact that the insurance policy was a comprehensive policy was not material for that purpose.

46. As observed hereinabove, the comprehensive policy does not mean that it covers all possible risks but it would mean that it is something more than the minimum requirement under the law. In that case, the premium was paid at the rate of Rs.12/- per passenger whereas in the present case which is something more than Rs.8/- per passenger.

47. Almost similar principle can be found in the case of Sheikhupura Transport Co. v. N.I.T.Insurance Co., reported in AIR 1971 SC 1624. It also says that in absence of any contract to the contrary, the statutory liability of the Insurer to indemnify the insured in the case of a vehicle allowed to carry more than six passengers, extends only upto Rs.2000/- in respect of each passenger, though the total liability may go upto Rs. 20,000/-. This was probably a case where liability per person was Rs.2,000/- in respect of a vehicle allowed to carry more than six passengers.

48. In this case the vehicle did not have permit to carry passengers for more than five passengers plus Driver and the law as on the date of the accident has been enunciated hereinabove. However, on principle it can be said that there can be two sets of liability - one individual liability per person and the second is total liability for the entire event. In this case, section 95 of the Act of 1939 makes it clear that the liability per person is Rs.10,000/- and the total liability is Rs.50,000/-. Therefore, on all account, we find that the learned Advocate for the appellants has not been able to convince us that the policy covers unlimited liability.

On the other hand, the policy makes it clear that it is an Act Policy and the premium has been paid by the owner of the vehicle in accordance with the minimum requirements and, therefore, the coverage of risk is only minimum in accordance with the provisions contained in section 95 of the said Act of 1939.

49. Under this circumstance, we find that the Tribunal has not committed any error in holding that the liability of the Insurance Company to indemnify the owner has been restricted to the extent of Rs.10,000/- and therefore, the Tribunal was justified in fixing the liability of the Insurance Company to the extent of Rs.10,000/- with proportionate costs and interest.

50. The learned Tribunal has extensively dealt with the subject of liability of the Insurance Company and has arrived at a proper conclusion. Hence we do not find any reason to interfere with the said findings and reasoning of the learned Tribunal and, therefore, we confirm the same. In that view of the matter, there is no merit in the present appeal and it deserves to be dismissed.

51. At the fag end of the arguments, the learned Advocate for the appellants has tried to argue that the learned Tribunal has committed error in awarding only Rs. 1,50,000/- and, therefore, the amount of award should be increased in the present case. However, on being requested to ascertain as to whether any such ground has been pleaded in the memo of the appeal, it was fairly conceded that no such ground has been taken in the appeal memo that the amount awarded in inadequate. Even the Court fees have been paid accordingly. Therefore, there is no prayer in this appeal that the amount of award is inadequate and therefore, it should be enhanced and there is no question of considering that aspect of the case.

52. In view of the aforesaid facts and circumstances, we find no merit in this present appeal and it should be dismissed. Normally the dismissal should follow the costs of the appeal. However, we find that at least four appellants out of six were minor at the time of instituting the main petition as well as at the time of instituting the appeal. The first appellant is the widow of the deceased and the sixth appellant is the mother of the deceased. Looking to their status and position we find it just and proper to leave the parties to bear their own costs in this appeal.

53. In view of the aforesaid, this appeal is ordered to be dismissed leaving the parties to bear their own

costs in this appeal.

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msp.